

OSHA and Small Business: Improving the Relationship for Workers

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G.M.

Testimony

Good afternoon, Mr. Chairman and members of the subcommittee. I am Jerrold Dodd, General Manager and Chief Operating Officer of Dayton United Metal Spinners, Inc. I am pleased to have the opportunity to testify on behalf of the National Association of Manufacturers (NAM) on ways to improve the relationship between OSHA and small businesses that benefit not only employers, but their workers.

As you are aware, the NAM is the nation's largest industrial trade association representing small and large manufacturers in every industrial sector and in all 50 states. The NAM's mission is to enhance the competitiveness of manufacturers and improve American living standards by shaping a legislative and regulatory environment conducive to U.S. economic growth. In light of our dedication to that mission, the NAM commends the Chairman and ranking Democrat for your efforts on this subcommittee to improve this important relationship between small business and OSHA.

Thank you for allowing me the time to tell you about what is unfortunately a very troublesome episode from my company's own history with OSHA.

First off, Dayton United Metal Spinners has been in business for 57 years. My brother and his wife bought the company in 1993, but have left the running of the company in my hands. We have a proud history of producing high-quality metal spinning products in a safe, family atmosphere. We are small, with under 20 workers, but each of the jobs at our plant is a good job; valuable to the workers and their families.

The reason I am here today is to relate a first-hand experience of what I believe to be an OSHA injustice. I think the Small Business OSHA Due Process Reforms, when passed, will certainly be a step in the right direction to correct some of the unfavorable OSHA conditions small businesses confront and maybe even prevent what I experienced from happening in the future.

On or about September 10, 2004, one of my punch-press employees severed the tips of two fingers. We packed the fingers on ice, called the emergency squad and had him flown to an amputee specialist at the Jewish Hospital in Louisville, Kentucky. The fingers were saved, reattached, and he came back to light duty within three months.

Approximately one week after the accident, an investigator from the Cincinnati, Ohio, OSHA office stopped in. She started asking a few questions about what happened, when by sheer coincidence the injured worker stopped in with his girlfriend. He came into my office, so I told the investigator that she was welcome to ask him what happened.

It was at this moment that the injured worker told the OSHA investigator in front of me, his girlfriend, and my administrative assistant, that the accident was his fault. He told the investigator that he was trying to set up the punch press while it was still turned on. He admitted this was a mistake--his mistake--and said he was trained otherwise.

The investigator then took him out in the parking lot and spoke with him. A little while

later she came back in and said she wanted to take some pictures and speak with some other employees. The injured worker came back into my office and told me that while outside alone with the investigator she told him to never admit wrongdoing in front of his employer and that he had grounds for a “major” lawsuit. The investigator also told him that he may not have a workers’ compensation claim if he admitted wrongdoing and he would have to pay for all the expenses himself.

I asked the injured worker if he would sign an affidavit to that effect and he later did just so. He also stated again that he told the investigator the accident was his own fault. The machine should have been locked out and he failed to do that. He was also upset that an OSHA investigator would even tell him that he could sue the company and should never admit to wrongdoing.

My story does not stop there.

The OSHA investigator also spoke outside to an employee who was working at a machine behind the injured worker at the time of the incident. The repeated investigation of this employee was just short of harassment. The employee, after being repeatedly asked the same questions with a tape recorder being selectively turned on and off, said the investigator made her feel like she was lying and that the company was being attacked for wrongdoing. The investigator also asked this second employee for her home phone and address so she could contact her away from the factory. I also have a signed affidavit from this employee stating exactly what happened during the OSHA interview. Needless to say, the manner and scope of the questioning by the OSHA investigator left not only my employees, but me very upset. Later, I wrote a letter to the Regional Director of OSHA in Chicago expressing my displeasure.

To my chagrin, this letter seemed to provoke the agency further and resulted in another visit from the first investigator and her superior, an OSHA Area Director. In the meantime, I had to hire Mr. Gary Auman of Dunlevey, Mahan and Fury, to represent me. Remember, this entire chain of events was caused by an employee forgetting to follow safe operational procedures.

When this second visit occurred it became more of an interrogation of me than an investigation of what happened with the worker and his severed fingers. The OSHA investigator was vindicated by her superior, and all of a sudden I was the bad guy.

I explained that I wanted no part of an interrogation, called Mr. Auman, put him on the phone with the Area Director, and they left.

Some time passed, but when I next heard from OSHA it was in the form of a notice that I had been fined \$17,000. Of course, small companies, such as mine, have no option but to pay an attorney to try and negotiate a lesser fine, despite then having to pay the eventual fine and attorney’s fees.

To date, I have paid over \$8,000 in such fees and got my fine reduced to \$3,500.

This incident gets worse. In addition to the above, this injury got me kicked out of my BWC group, which I was in for having a good safety record. My projected BWC premiums are now going to run between \$45,000 and \$50,000 a year versus the \$15,000 I used to pay.

All this expense is for something that an employee admitted was his fault. With the shrinking manufacturing work my company sees each year; this is all money that I can’t afford to pay.

Instead of understanding and help from OSHA, I got fined, thrown out of a group rating,

and possibly faced with closing my doors if the money keeps flowing out the door for the wrong reasons.

We have worked very hard on writing safety and operational procedures that have allowed us to be audited and found compliant to meet the AS9000 standards necessary in our industry. We train all of our employees in these safety and operational procedures and spend large sums to keep our equipment safe.

If I were to make a recommendation or two, I would first suggest that OSHA investigators be re-trained to get out of the “employer always guilty first, then the employee” mindset. They should be more of a help in showing employers what needs fixing, and then give the employer time to make repairs. Fines should be a last option. They should also be absolutely prohibited from giving legal advice or suggesting legal remedies to any employees they interview.

It is next to impossible for a person running a small business to know everything there is to know in the OSHA standards manual. Investigators need to recognize that, look at what safety devices the company already has in place, what training exists for employees, and take these into consideration.

Manufacturing in the United States is under assault like never before. I believe that providers of jobs in this nation are taxed, sued and regulated to death by what are largely unintended consequences of government action. I don't think our competitors have these same issues to contend with.

All people like me ask of lawmakers like the ones on this subcommittee is to keep a perspective on what each new law and regulation means to people trying to make a living in the rest of the country. For a long time there has been a company called Dayton United Metal Spinners, and we'd like to keep it that way for a long time to come. But, when the government comes knocking on the door, like they did in my case, and only sees retribution and condemnation as its role in what amounted to a worker failing to do his job properly, then I just don't what to think about the future.

The NAM and its members are working to extend this great American economy to a new century of growth and opportunity. We want to lower the costs of production that hamstring us against the world competitors that are taking away so much our national wealth. This subcommittee can play its part by examining new methods for agencies like OSHA to employ when reaching out to employers and workers. No one wants an unsafe workplace. I live and work with my employees and see them around town. Do I want to alienate them, drive them away and see harm done to them from my own incompetence? No way. I'm not that kind of person and my company is not that kind of business.

This experience with OSHA shows how sometimes its inspectors can stray from their mission of safety and health and get out of control. Legislation that would allow small businesses to have their attorney's fees reimbursed when they successfully defend a citation would be a step in the right direction to help small manufacturers like myself in dealing with these unruly situations.

I invite all of you to visit your own local manufacturing companies and see firsthand what they're making. The American manufacturer wants to work, let's keep it that way for a long, long time.

Thank you again for this opportunity and I look forward to answering any questions you may have.